

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1) KIMBERLY POFF,

Plaintiff,

v.

Case No. CIV-14-1438-C

(1) STATE OF OKLAHOMA *ex rel* THE
OKLAHOMA DEPARTMENT OF
MENTAL HEALTH AND

SUBSTANCE ABUSE SERVICES;

(2) THE BOARD OF DIRECTORS FOR
THE OKLAHOMA DEPARTMENT
OF MENTAL HEALTH AND
SUBSTANCE ABUSE SERVICES;

(3) TERRY WHITE, individually and as
the Commissioner and Chief
Executive Officer of the Oklahoma
Department of Mental Health And
Substance Abuse Services;

(4) DURAND CROSBY, individually
and as the Chief Operating Officer of
the Oklahoma Department of Mental
Health And Substance Abuse
Services;

(5) CRATUS DEWAYNE MOORE,
individually and as the General
Counsel of Oklahoma Department of
Mental Health And Substance Abuse
Services; and

(6) ELLEN BUETTNER, individually
and as the Director, Human Resources
Management, Human Resources
Development for the Oklahoma
Department of Mental Health And
Substance Abuse Services,

Defendants.

NOTICE OF REMOVAL

Defendants, State of Oklahoma *ex rel* The Oklahoma Department of Mental
Health and Substance Abuse Services (the “Department”), The Board of Directors for

The Oklahoma Department of Mental Health and Substance Abuse Services (the “Board”), as well as Terri White, Durand Crosby, Cratus Dewayne Moore, and Ellen Buettner (collectively, the “Individual Defendants”), hereby submit this Notice of Removal pursuant to 28 U.S.C. §§ 1131 and 1441 *et seq.*, and allege and state as follows:

1. On December 12, 2014, the Department, the Board, and the Individual Defendants were served with a Petition filed in the District Court of Oklahoma County, State of Oklahoma, styled: *Kimberly Poff, Plaintiff vs. State of Oklahoma ex rel The Oklahoma Department of Mental Health and Substance Abuse Services, et al., Defendants*, Case No. CJ-2014-4407 (hereafter referred to as the “State Court Action”). A copy of the Petition is attached hereto as Exhibit 1, along with the Summons served upon the Department, the Board, and the Individual Defendants, Exhibit 2, and proof of service, Exhibit 3.

2. This Court has original jurisdiction under 28 U.S.C. § 1331, and this case is hereby removed to this Court under the provisions of 28 U.S.C. §§ 1441 *et seq.*

3. Based upon the allegations in the Petition filed in the State Court Action, at the time of filing this action and at the present time, Plaintiff Kimberly Poff, (“Plaintiff”) was and is a resident and citizen of the State of Oklahoma.

4. At the time of filing this action and at the present time, the Department was and is a Department of the State of Oklahoma; the Board of Directors for the Department of Mental Health and Substance Abuse Services is a group of persons who are each Oklahoma citizens and it is collectively a Board operating under authority from the State

of Oklahoma; and Individual Defendants, Terri White¹, Durand Crosby, Cratus Dewayne Moore and Ellen Buettner are each citizens of Oklahoma, and whose employment as involved in this case, was at all times in the State of Oklahoma. All Defendants have been consulted about the removal of this matter to federal court, and each Defendant has expressly agreed to, consents to and joins in the removal of this action to this Court.

5. Plaintiff asserts against all Defendants, including the Department, claims arising pursuant to federal laws for alleged age discrimination and sex discrimination under “the Civil Rights Act of 1964” (Exhibit 1, Petition, ¶ 80), retaliation for exercising her right to speech under “the 42 U.S.C. §1983 and the United States ... Constitution” (Exhibit 1, Petition, ¶ 91), and “violations of procedural due process rights” by Defendants “acting under ‘color of state law’” pursuant to “42 U.S.C. §1983” and the “United States ... Constitution” (Exhibit 1, Petition, ¶¶ 95, 99, and 100). She also alleges other claims arising under Oklahoma law. She claims damages in lost wages and benefits, damage to reputation, lost opportunity for advancement and training, mental stress, and pain and suffering. Plaintiff claims that her damages exceed \$75,000.00, exclusive of any interest and costs.

6. This case is properly removable because this is the kind of action for which the United States District Courts have original jurisdiction pursuant to 28 U.S.C. §1331 because some or all of Plaintiff’s claims arise under the Constitution, laws or treaties of the United States.

¹ Terri White’s name is misspelled as “Terry” White in the Petition filed by Plaintiff.

7. Plaintiff filed this lawsuit on August 4, 2014, in the District Court of Oklahoma County, Oklahoma. The aforementioned action was served via certified mail upon the Department, the Board, and the Individual Defendants on December 12, 2014. Thus, this Notice of Removal is timely filed under the provisions of 28 U.S.C. § 1446.

8. Copies of all process, pleadings and orders filed or served upon the Department, the Board, and the Individual Defendants in the aforementioned State Court Action are attached hereto as follows, and made a part hereof:

Exhibit 1 Petition;

Exhibit 2 Original Summons;

Exhibit 3 Proof of Service;

Exhibit 4 Docket Sheet in State Court Action, pursuant to LCvR 81.2.

9. Contemporaneously herewith, written notice of this Notice of Removal will be serviced on all parties to this action, and a copy of this Notice of Removal is being filed with the Court Clerk of Oklahoma County, Oklahoma pursuant to 28 U.S.C. §1446, which shall effect the removal, and said State Court shall proceed no further unless and until the case is remanded, as provided by law. A copy of that Notice of Filing Notice of Removal is attached hereto as Exhibit 5.

WHEREFORE, the Department, the Board, and the Individual Defendants, by and through their undersigned counsel, hereby remove the above-captioned case now pending in the District Court of Oklahoma County, State of Oklahoma to the United States District Court for the Western District of Oklahoma.

JURY TRIAL DEMANDED.

Respectfully submitted,

/s/ Victor F. Albert

VICTOR F. ALBERT, OBA #12069

CONNER & WINTERS, LLP

1700 One Leadership Square

211 North Robinson

Oklahoma City, OK 73102

Telephone: (405) 272-5711

Facsimile: (405) 232-2695

valbert@cwlaw.com

Attorney for Defendants,

State of Oklahoma ex rel The Oklahoma

Department of Mental Health and Substance

Abuse Services and The Board of Directors for

The Oklahoma Department of Mental Health

and Substance Abuse Services

/s/ Jeremy Tubb

Jeremy Tubb, OBA #16739

Matthew S. Panach, OBA #22262

FULLER, TUBB, BICKFORD & KRAHL

201 Robert S. Kerr, Suite 1000

Oklahoma City, OK 73102

Telephone: (405) 235-2575

Facsimile: (405) 232-8384

jeremy.tubb@fullertubb.com

panach@fullertubb.com

Attorneys for Defendants Terri White, Durand

Crosby, Cratus Dewayne Moore, and Ellen

Buettner

CERTIFICATE OF SERVICE

I certify that on the 31st day of December 2014 this Notice of Removal was filed in the United States District Court for the Western District of Oklahoma, and that a true and correct copy of said Notice of Removal was served, via U.S. mail postage prepaid, upon the following:

Rachel L. Bussett, OBA #19769
Bussett Law Firm, PC
3555 N.W. 58th Street, Suite 1010
Oklahoma City, OK 73112
Telephone: (405) 605-8073
Facsimile: (405) 601-7765
rachel@bussettlaw.com
Attorneys for Plaintiff

/s/ Victor F. Albert

VICTOR F. ALBERT